

COMPLIANCE AUDIT

District Court 21-3-05
Schuylkill County, Pennsylvania
For the Period
January 1, 2018 to December 31, 2021

November 2023



Commonwealth of Pennsylvania
Department of the Auditor General

Timothy L. DeFoor • Auditor General



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**TIMOTHY L. DEFOOR
AUDITOR GENERAL**

The Honorable Pat Browne
Secretary
Pennsylvania Department of Revenue
Harrisburg, PA 17128

We have conducted a compliance audit of the District Court 21-3-05, Schuylkill County, Pennsylvania (District Court), for the period January 1, 2018 to December 31, 2021, pursuant to the requirements of Section 401(c) of *The Fiscal Code*, 72 P.S. § 401(c).

The objective of the audit was to determine whether all moneys collected on behalf of the Commonwealth have been correctly assessed, reported, and promptly remitted and to provide a report to the Department of Revenue to allow the Department of Revenue to state and settle the District Court's account. Our audit was limited to areas related to the objective identified above and was not conducted, nor was it required to be, in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

The District Court is responsible for establishing and maintaining effective internal controls to provide reasonable assurance of compliance with state laws and regulations applicable to the collection of moneys on behalf of the Commonwealth, including whether they have been correctly assessed, reported, and promptly remitted. The District Court is also responsible for complying with those laws and regulations. It is our responsibility to perform procedures to obtain sufficient, appropriate evidence to the extent necessary to satisfy the audit objective. We believe that our audit provides a reasonable basis for our conclusions.

Based on our audit procedures, we conclude that, for the period January 1, 2018 to December 31, 2021, the District Court, in all significant respects, complied with state laws and regulations applicable to the collection of moneys on behalf of the Commonwealth, including whether they have been correctly assessed, reported, and promptly remitted, except as noted in the finding listed below and discussed later in this report:

- Inadequate Arrest Warrant And DL-38 Procedures.

This report includes a summary of the District Court's receipts and disbursements of funds collected on behalf of the Commonwealth (summary). We obtained data representing the District Court's receipts and disbursements from the Pennsylvania Department of Revenue, which obtains data from each of the Commonwealth's district courts and used the data to create the summary in the format required by the Department of Revenue. We also evaluated the accuracy of the data as part of our audit to conclude on the District Court's compliance with certain state laws and regulations as described in the previous paragraph. Any adjustments that we considered necessary based on our audit work are disclosed in the *Audit Adjustments* line of the summary; however, the scope of our audit does not include the issuance of an opinion on the accuracy of the amounts reported in the summary.

The purpose of this report is to determine whether all moneys collected on behalf of the Commonwealth have been correctly assessed, reported, and promptly remitted. This report is not suitable for any other purposes.

The contents of this report were discussed with the management of the District Court and, where appropriate, their response has been included in the report. We appreciate the courtesy extended by the District Court 21-3-05, Schuylkill County, to us during the course of our audit. If you have any questions, please feel free to contact the Bureau of County Audits at 717-787-1363.

A handwritten signature in black ink that reads "Timothy L. DeFoor". The signature is written in a cursive style with a long horizontal line extending to the left of the first letter.

Timothy L. DeFoor
Auditor General
October 2, 2023

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DISTRICT COURT 21-3-05
SCHUYLKILL COUNTY
BACKGROUND
FOR THE PERIOD
JANUARY 1, 2018 TO DECEMBER 31, 2021

The Department of Auditor General is mandated by Article IV, Section 401(c) of *The Fiscal Code* (Act of April 9, 1929, P.L.343, No. 176), to audit the accounts of each district court to determine whether all moneys collected on behalf of the Commonwealth have been correctly assessed, reported, and promptly remitted.

District Court receipts are comprised of fines, costs, fees, and surcharges collected on behalf of the Commonwealth. These fines, costs, fees, and surcharges represent collections made on traffic, non-traffic, civil, and criminal cases filed with the District Court.

Total disbursements during the audit period are comprised as follows:

District Court checks issued to:

Department of Revenue	<u>\$ 1,489,917</u>
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This balance reflects the summary of monthly transmittal reports as settled by the Department of Revenue.

Anthony J. Kilker served at District Court 21-3-05 for the period January 1, 2018 to December 31, 2021.

The summary of receipts and disbursements on the following page provides a summary of receipts and disbursements by category. The categories and the amounts of fines, costs, fees, and surcharges assessed are based on Pennsylvania laws and regulations.

The summary was prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Revenue. Under this method, only the Commonwealth portion of cash receipts and disbursements are presented, revenues are recognized when received, and expenditures are recognized when paid.

DISTRICT COURT 21-3-05
SCHUYLKILL COUNTY
SUMMARY OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD
JANUARY 1, 2018 TO DECEMBER 31, 2021

Receipts:

Department of Transportation		
Title 75 Fines	\$	165,346
Motor Carrier Road Tax Fines		175
Overweight Fines		1,357
Commercial Driver Fines		2,000
Littering Law Fines		50
Child Restraint Fines		1,271
Department of Revenue Court Costs		153,459
Crime Victims' Compensation Bureau Costs		11,309
Crime Commission Costs/Victim Witness Services Costs		8,053
Domestic Violence Costs		2,995
Department of Agriculture Fines		2,041
Emergency Medical Service Fines		92,365
CAT/MCARE Fund Surcharges		279,961
Judicial Computer System Fees		79,398
Access to Justice Fees		41,474
Criminal Justice Enhancement Account Fees		4,460
Judicial Computer Project Surcharges		112,504
Constable Service Surcharges		7,038
Miscellaneous State Fines and Costs		<u>524,661</u>
 Total receipts		 1,489,917
 Disbursements to Commonwealth		 <u>(1,489,917)</u>
 Balance due Commonwealth (District Court) per settled reports		 -
 Audit adjustments		 <u>-</u>
 Adjusted balance due Commonwealth (District Court) for the period January 1, 2018 to December 31, 2021	 <u>\$</u>	 <u>-</u>

DISTRICT COURT 21-3-05
SCHUYLKILL COUNTY
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2018 TO DECEMBER 31, 2021

Finding - Inadequate Arrest Warrant And DL-38 Procedures

Warrants and Requests For Suspension Of Operating Privileges (DL-38s) are used to enforce the collection of monies on traffic and non-traffic cases in which defendants failed to make payments when required. A Warrant of Arrest (AOPC 417) is used to authorize an official to arrest a defendant, to collect fines and costs from the defendant after a disposition, or to collect collateral for a trial. If the defendant does not respond within ten days to a citation or summons, a Warrant of Arrest may be issued. A Request for Suspension of Driving Privileges for Failure to Respond to a Citation or Summons or Pay Fines and Costs Imposed (AOPC 638A) is used to notify the defendant in writing that his/her license will be suspended if he/she fails to respond to the traffic citation or summons. A DL-38 cannot be issued for a parking violation.

During our testing of warrant procedures, we noted that warrant procedures established by the *Magisterial District Judge Automated Office Clerical Procedures Manual* (Manual) were not always followed. The Magisterial District Judge did not consistently issue warrants when required.

We tested 29 instances in which a warrant was required to be issued under Pa.R.Crim.P. 430(b)(1). Our testing disclosed that one was not issued and four were not issued timely. The time of issuance ranged from 62 days to 285 days.

We also tested 17 instances in which a warrant may be issued under Pa.R.Crim.P. 430(b)(3). Our testing disclosed that three were not issued and 11 were not issued timely. The time of issuance ranged from 62 days to 381 days. These results do not include instances in which the Magisterial District Judge recently ordered a payment determination hearing, sentenced the defendant to jail time in lieu of payment, or sentenced the defendant to perform community service.

In addition, of 42 warrants required to be returned or recalled, 20 were not returned or recalled timely, and 14 were not returned or recalled. The time of issuance to the time of return ranged from 197 days to 1,541 days.

Furthermore, we tested 11 instances in which a DL-38 was required to be issued. Our testing disclosed that seven were not issued timely and three were not issued at all. The time of issuance ranged from 62 days to 285 days.

The Manual establishes the uniform written internal control policies and procedures for all district courts.

DISTRICT COURT 21-3-05
SCHUYLKILL COUNTY
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2018 TO DECEMBER 31, 2021

Finding - Inadequate Arrest Warrant And DL-38 Procedures (Continued)

Warrant Issuance Procedures: The Manual states that on October 1, 1998, new warrant procedures took effect for summary cases. Amendments were made to Pa.R.Crim.P. 430, 431, 454, 455, 456, 460, 461, and 462. To comply with the new changes, the Notice of Impending Warrant (AOPC A418) was created with the purpose of informing the defendant that failure to pay the amount due or to appear for a Payment Determination Hearing will result in the issuance of an arrest warrant. The defendant is also informed that his/her response must be made within ten days of the date of the notice.

According to Pa.R.Crim.P. 430(b)(1), a warrant SHALL be issued in a summary case for any of the following reasons (a Notice of Impending Warrant is not necessary for the following):

- The defendant has failed to respond to a citation or summons that was served either personally or by certified mail, return receipt requested.
- The citation or summons is returned undeliverable.
- The Magisterial District Judge has reasonable grounds to believe that the defendant will not obey a summons.

According to Pa.R.Crim.P. 430 (b)(3), a Notice of Impending Warrant may be issued in a post-disposition summary case for any of the following reasons:

- A guilty disposition is recorded and no payment is made or a time payment schedule is not created.
- A guilty disposition is recorded and a previously deposited collateral payment, when applied, does not pay the case balance in full.
- A guilty disposition is recorded and the defendant defaults on a time payment schedule.

Warrant Return Procedures: The Manual states that the Administrative Office of Pennsylvania Courts (AOPC) recommends that those in possession of arrest warrants should be notified to return warrants that have not been served. For summary traffic and non-traffic cases, outstanding warrants should be returned to the Magisterial District Judge's office within 120 days of issuance. Returned warrants can either be recorded in the Magisterial District Judge System (MDJS) as unserved, if the defendant is unable to be located; or they can be recalled for reissue, if the server has not exhausted all means of finding the defendant.

DISTRICT COURT 21-3-05
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FINDING AND RECOMMENDATIONS
FOR THE PERIOD
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Finding - Inadequate Arrest Warrant And DL-38 Procedures (Continued)

DL-38 Procedures: The Manual states that once a citation is given to the defendant or a summons is issued, the defendant has ten days to respond. If on the eleventh day, the defendant has not responded, 75 Pa.C.S. §1533 requires that the defendant be notified that he/she has 15 days from the date of notice to respond to the citation/summons before his/her license is suspended. In accordance with Section 1533 of the Pennsylvania Vehicle Code, the defendant has 15 days to respond to the defendant's copy of the DL-38. If the defendant does not respond by the fifteenth day, the Magisterial District Judge's office shall notify the Pennsylvania Department of Transportation by issuing the appropriate License Suspension Request (AOPC 638B,D,E).

In addition, 75 Pa.C.S. §1533 also requires a post-disposition DL-38 (AOPC 638B/E) be issued if the defendant neglects to pay fines and costs imposed at the time of disposition or fails to make a scheduled time payment.

The failure to follow warrant procedures could result in uncollected fines and unpunished offenders. Additionally, the risk is increased for funds to be lost or misappropriated. Therefore, it is considered best business practice to issue warrants that fall under Pa.R.Crim.P. 430(b)(3) when other actions are not taken by the Magisterial District Judge to compel compliance by the defendant, such as ordering a payment determination hearing, sentencing to jail time in lieu of payment, or sentencing to perform community service.

The court staff stated that these conditions existed because the court has been short staffed and was in transition with a new employee during the audit period. Adherence to the uniform internal control policies and procedures, as set forth in the Manual, would have ensured that there were adequate internal controls over warrants and DL-38s.

Recommendations

We recommend that the district court review the tickler reports for warrants and DL-38s daily and take appropriate action as required by the Manual. We further recommend that the court review warrant control reports and notify police or other officials to return warrants that are unserved for 120 days for summary traffic and non-traffic cases as recommended by the Manual.

DISTRICT COURT 21-3-05
SCHUYLKILL COUNTY
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
JANUARY 1, 2018 TO DECEMBER 31, 2021

Finding - Inadequate Arrest Warrant And DL-38 Procedures (Continued)

Management's Response

The Magisterial District Judge responded as follows:

Response: The District Court was informed of 4 instances, under shall issue a warrant, of late issuance of arrest warrants over this four year time period. The four cases are as follows:

NT-[case no.]-19 -Upon further review this citation was sent certified mail and this court never received a return by the USPS. The District Court issued a warrant as soon as it came to our attention. Therefore the 108 days are not possible since the bench warrant tickler on this case was never activated.

TR-[case no.] -19–This case is listed as 285 days late. However, a bench warrant tickler was activated on 2/13/20 and a warrant was issued on 4/8/20, 54 days later.

TR-[case no.] -20–This case tickled 08/01/20 and was issued 10/5/20, 66 days later not 76 as is stated on the written finding.

TR - [case no.] -21– This case tickled for a warrant on 2/9/21 and a warrant was issued on 3/30/21, 50 days later not 62 as indicated on the report.

In the previous years of audits this court was under the impression that 90-120 days were acceptable as evidenced by no written findings in the previous 9 years. This court is in an economically depressed area and many people do not have the funds readily available or simply need more time. This court works with all of our constituents to find solutions.

During this time period the district court was effected [*sic*] substantially by the following events and issues.

COVID-19: The district court was closed for a period of time and the staff members were furloughed. Furthermore, there was a direct order from the Pennsylvania Supreme Court as well as the Schuylkill County President Judge to not issue warrants and license suspensions during this time period. In part, the order stated, “a missed payment or default SHALL NOT RESULT in the issuance of an arrest warrant for failure to make payment, nor shall non-payment result in driving privileges being suspended.”

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FINDING AND RECOMMENDATIONS
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Finding - Inadequate Arrest Warrant And DL-38 Procedures (Continued)

Management's Response (continued)

The US mail was also delayed substantially during Covid-19, especially certified mail. This delay in turn required the court to extend the normal time frame of responses and payments in order to be fair.

Retirements: This district court was hit with the retirement of two staff members who had a combined 57 years of service to the county. Staff shortages and training new employees also played a role as a result of these retirements. Further complicating the issue was our number one constable also retired during this period after serving the court for over 33 years. This retirement significantly impacted the court as we only work with two constables and his retirement necessitated the search for another constable to issue warrants since all police agencies in the district refuse most traffic and non-traffic warrants post disposition. This constable also returned all of his warrants to the court which took months to enter into the computer, either returned unserved or reissue, further delaying the process.

Rules of Criminal Procedure: According to the Pennsylvania Rules of Criminal Procedure, Summary Cases, specifically Rule 430, Issue of Warrants. [*sic*] Pre-disposition arrest and bench warrants are mandated by the Rules that a warrant **shall** be issued. Post-Disposition a bench warrant **may** be issued according to the Rules. When inquiring to the relevance concerning this audit the court was informed of 11 incidents over the four year period which fell into the **may** category. I did not review the **may** warrants for the purposes of this response.

Return of Warrants: This court instructs all of our warrant holders to return warrants after 120 days. Most warrant holders do not return warrants even after repeated attempts. The District Court is limited in having these warrants physically returned. We continue to follow procedure and request the return of the outstanding warrants.

Conclusion: The previous nine years of audits which include 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 have no written findings. During this current audit period, although the court experienced many external and internal challenges, the findings were very similar to the years no written findings were issued. The written finding was based on a sample size of 46 random cases of which 15 (11 instances of may, only 4 instances of shall) were found defective in some manner. On further review, those 4 shall cases may not be accurate according to the report. Going forward the court will continue the effort that brought success in the 9 previous audited years and will also issue a written monthly reminder to all warrant holders to return all warrants post 120 days per the MDJS manual as well as increase our timeline for issuing warrants.

DISTRICT COURT 21-3-05
SCHUYLKILL COUNTY
FINDING AND RECOMMENDATIONS
FOR THE PERIOD
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Finding - Inadequate Arrest Warrant And DL-38 Procedures (Continued)

Auditor Conclusion

We acknowledge the district court's concerns regarding the issuance of warrants in the four cases mentioned above. However, based on our testing procedures and the documentation provided by the court, the warrants were determined to be issued untimely. Therefore, it was necessary for us to report our findings regarding this issue. We suggest that the court consult with the Administrative Office of Pennsylvania Courts for guidance on the issuance of warrants.

Although we recognize the district court's concerns about staffing, it is imperative that warrants and DL-38s are issued and that warrants are returned or recalled timely to enforce the collection of monies, to punish offenders for nonpayment of monies due the district court, and to reduce the risk of misappropriation by those in control of the warrant.

Our finding has addressed the rules of criminal procedures with specific itemization of exceptions for pre and post disposition warrant requirements. As noted above, it is considered best business practice to issue warrants that fall under Pa.R.Crim.P. 430(b)(3) when other actions are not taken by the Magisterial District Judge to compel compliance by the defendant, such as ordering a payment determination hearing, sentencing to jail time in lieu of payment, or sentencing to perform community service.

Furthermore, Magisterial District Judges have the power to choose the independent contractors who will perform services on behalf of the court. They also have the authority to dictate minimum standards of satisfactory performance, so long as said standards are not inconsistent with pertinent statutes and Rules of Court. Such standards should include the requirement that constables or other third parties return warrants when requested.

Lastly, we acknowledge the court's concerns regarding the COVID-19 pandemic. We did not include any exceptions in the finding which occurred during the pandemic.

During our next audit, we will determine if the district court complied with our recommendations.

DISTRICT COURT 21-3-05
SCHUYLKILL COUNTY
REPORT DISTRIBUTION
FOR THE PERIOD
JANUARY 1, 2018 TO DECEMBER 31, 2021

This report was initially distributed to:

The Honorable Pat Browne
Secretary
Pennsylvania Department of Revenue

The Honorable H. Geoffrey Moulton, Jr.
Court Administrator of Pennsylvania
Supreme Court of Pennsylvania
Administrative Office of Pennsylvania Courts

The Honorable Anthony J. Kilker
Magisterial District Judge

The Honorable Barron L. Hetherington
Chairperson of the Board of Commissioners

The Honorable Sharyn Yackenchick
Controller

Ms. Mary S. Timpany
District Court Administrator

This report is a matter of public record and is available online at www.PaAuditor.gov. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 229 Finance Building, Harrisburg, PA 17120; via email to: news@PaAuditor.gov.